

KELLEY DRYE & WARREN LLP

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AFFILIATE OFFICES  
JAKARTA, INDONESIA  
MUMBAI, INDIA

TYSONS CORNER  
8000 TOWERS CRESCENT DRIVE  
SUITE 1200  
VIENNA, VIRGINIA 22182

(703) 918-2300

DOCKET FILE COPY ORIG  
FACSIMILE  
(703) 918-2450  
www.kelleydrye.com

JASON KARP  
DIRECT LINE: (703) 918-2465  
EMAIL: jkarp@kelleydrye.com

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APR 13 2005

Federal Communications Commission  
Office of Secretary

April 12, 2005

VIA ELECTRONIC FILING AND HAND DELIVERY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: DA 05-762, and WC Docket No. 05-75, Applications for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI, Inc.**

Dear Ms. Dortch:

On March 24, 2005, the Wireline Competition Bureau ("WCB") issued a Public Notice<sup>1</sup> seeking comment on the applications for transfer of control to Verizon Communications Inc. ("Verizon") of certain licenses and authorizations granted to MCI Inc. ("MCI") under Section 214 and 310(d) of the Communications Act of 1934, as amended,<sup>2</sup> and Section 2 of the Cable Landing License Act.<sup>3</sup> That Public Notice requires all comments be filed with the Commission no later than May 9, 2005, and that all responses or oppositions to such comments be filed no later than May 24, 2005.<sup>4</sup> We now formally request, on behalf of XO Communications, Inc., that the WCB suspend such comment schedule pending the final outcome of MCI's negotiations with competing bidder Qwest Communications International, Inc. ("Qwest").

As the WCB and Commission are undoubtedly aware, despite MCI's initial acceptance of Verizon's takeover bid, as evidenced in that certain announcement of Agreement and Plan of Merger on February 14, 2005, it has continued to entertain competing offers from Qwest. Most recently, Qwest submitted a proposed bid worth approximately \$8.9 billion, approximately \$1.4 billion more than the

<sup>1</sup> WC Docket No. 05-75, *Commission Seeks Comment on Applications for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI, Inc.* (Rel. March 24, 2005) ("Public Notice").

<sup>2</sup> 47 U.S.C. §§ 214, 310(d).

<sup>3</sup> See An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39.

<sup>4</sup> Public Notice at 5.

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estimated worth of the Verizon proposal.<sup>5</sup> Complicating this scenario is the fact that Verizon has now publicly stated that it will walk away from its current agreement with MCI if the MCI Board determines a Qwest offer to be superior to that of Verizon.<sup>6</sup> While as of last Tuesday night, April 5, 2005, MCI's Board initially rejected the most recent Qwest offer, local press has reported the possibility of either an increased Qwest bid or a hostile takeover.<sup>7</sup> Indeed, it has been also reported that MCI has indicated its willingness to continue discussions with Qwest.<sup>8</sup> Additionally, certain analysts have predicted that if a supplemental Qwest bid were to materialize, it would likely happen shortly prior to the MCI shareholder vote, currently anticipated for June, which is, notably, after the close of the comment period in this proceeding.<sup>9</sup>

As the Commission is aware, the current bidding war has been ongoing for approximately 2 months, and now has again gained traction. There is no telling how long this bidding contest might continue, which could be for several weeks if not longer. Now, while we understand that this is a matter for MCI's Board and shareholders to ultimately determine, and is not before the Commission, the ultimate outcome of that decision will directly impact the direction of the instant proceeding. Indeed, the WCB has recognized through its Public Notice that there are several complex issues that will need to be addressed by the Commission and the telecommunications community at large.<sup>10</sup> In light of this fact, it does not make sense to require the industry to spend the time, effort and resources to undertake the complex analyses required and make the necessary filings when there is so much uncertainty surrounding the contemplated transaction.

In this regard, we believe that the application for transfer of control currently pending before the Commission, and the resulting pleading schedule set forth by the WCB, are premature. There is clearly too much uncertainty with respect to the contemplated merger transactions for the industry to be able to meaningfully comment. Moreover, it would be a waste of both Commission and industry resources for commenting parties to take steps to prepare their arguments and pleadings only to have them potentially rendered moot at the 11<sup>th</sup> hour. Indeed, the transaction between MCI and Verizon will be extremely complex, with much at stake for all participating parties, which is precisely why a 45 day comment schedule was established. It will take time for all interested parties to formulate meaningful positions and arguments for the Commission to consider. This can only be done if the industry knows which transaction is ultimately accepted by MCI. Conversely, we do not perceive any material harm to the industry or prejudice to the filing parties in postponing the comment schedule until there is more

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<sup>5</sup> See *QWEST: MCI BID NOT NECESSARILY BEST AND FINAL*, TR Daily (April 5, 2005).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* See also, *MCI Again Rejects Qwest Merger Offer*, Washington Post, p. E05 (April 6, 2005). Indeed, according to the Wall Street Journal, Legg Mason Capital Management, which owns 5.6 million shares of MCI, is supporting the Qwest offer. See *How Much Can Qwest Offer MCI Without Hurting Itself?*, The Wall Street Journal, p. C1 (April 6, 2005).

<sup>8</sup> See *QWEST: MCI SHAREHOLDERS WILL DECIDE ON BID*, TR Daily (April 6, 2005).

<sup>9</sup> *Id.* According to TR Daily, Goldman Sachs & Co. telecom analyst Daniel Henriques noted that "a vote of MCI shareholders on the current merger agreement won't likely take place until mid-June, and that any further moves by Qwest were likely to be timed closer to that voting window." *Id.*

<sup>10</sup> Public Notice at 5, fn. 15.

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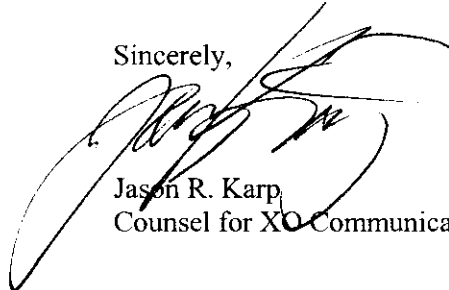
certainty regarding the contemplated transaction. Quite to the contrary, we believe the industry, as well as the parties, will benefit by the delay in order to avoid duplicative effort by all involved.

There is now less than a month remaining in the initial comment cycle, yet the contemplated parties to the merger transaction have yet to come to final agreement on terms, and indeed the acquirer itself may change. This fact alone flies in the face of the Commission's intent in establishing a 45 day comment cycle. Whether the contemplated merger parties come to agreement tomorrow or in three weeks, the industry needs to be able to rely on the information as filed in the relevant transfer of control applications in order to effectively and efficiently participate in this proceeding. Additionally, the parties will then need adequate time to prepare for the many complex issues which are raised by either of the proposed change of control scenarios. Christina Bartsch, an analyst with the London-based Ovum Holdings Ltd., may have summed it up best, stating that *"MCI has once again left the door open to further bids from Qwest, which will prolong the uncertainty for some time to come."*<sup>11</sup>

We thus respectfully request that the Commission suspend the current comment schedule in its entirety pending a final decision by the MCI Board and shareholders regarding which of its two suitors it shall ultimately consummate a transaction.

Thank you for your prompt attention to this matter.

Sincerely,



Jason R. Karp  
Counsel for XO Communications, Inc.

cc: Thomas Navin, Competition Policy Division  
Michelle Carey, Wireline Competition Bureau  
Christopher McKee, XO Communications, Inc.